

# THE MARTHA'S VINEYARD COMMISSION

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## Minutes of the Special Meeting of August 14, 2003

Held in the Olde Stone Building,  
33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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**Commissioners:** James A. Athearn, Chairman (Elected – Edgartown), John Best (Elected – Tisbury), Christina Brown (Elected – Edgartown), Linda DeWitt (Appointed – Edgartown), Jane A. Greene (Appointed – Chilmark), Tristan Israel (Appointed – Tisbury), Deborah Moore (Elected - Aquinnah), Katherine Newman (Appointed – Aquinnah), Megan Ottens-Sargent (Elected – Aquinnah), Bob Schwartz (Appointed – West Tisbury), Alan Schweikert, (Appointed – Oak Bluffs), Doug Sederholm (Elected – Chilmark); Linda Sibley, (Elected – West Tisbury), Paul Strauss (Appointed – County), Richard Toole (Elected – Oak Bluffs), Andrew Woodruff (Elected – West Tisbury)

**Staff:** Mark London (Executive Director), Jennifer Rand (DRI Coordinator), Bill Wilcox (Water Resources Planner), Christine Flynn, (Affordable Housing; Economic Development), Bill Veno, (Senior Planner), Jo-Ann Taylor (Coastal Planer, DCPCs), Jeff Wooden (Administrator), Jacqueline Campbell (Staff Secretary)

### 1. CK ASSOCIATES (DRI No 555 ) – PUBLIC HEARING

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*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, D. Moore, K. Newman, M. Ottens-Sargent, R. Schwartz, A. Schweikert, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff.*

*For the Applicant: Brian Lafferty*

There being a quorum present, Christina Brown, Hearing Officer, opened the Public Hearing and read the Hearing Notice.

The Commissioners introduced themselves.

**Christina Brown** said that there had been an allegation made that one of Martha Vineyard Commission (MVC) members had a bias and should not participate in this Hearing. She said that the MVC takes this allegation seriously. This matter is being dealt with by our lawyers and will not be discussed or deliberated at this tonight.

**Christina Brown** explained that the purpose of the Hearing was for the Commissioners and members of the public to hear from the Applicant, to learn what the application was, and to let the members of the public make comments. She explained that this was a Public Hearing, not a debate, and explained the order of testimony; namely: the Applicant's presentation, questions of clarification by Commissioners, Staff reports, testimony from Town officials, and public testimony in favor and against the project. All comments were welcomed. At the end of the Hearing, the Applicant would have an opportunity to respond to the questions raised during the Hearing.

**Richard Toole** made a disclosure to the effect that he had been named in a lawsuit brought against him in the context of a prior Application for this piece of property. He said that his ability to sit on that Hearing had been challenged cleared by the State Ethics Commission.

**Jim Athearn** said that the previous lawsuit was filed against the MVC, named several Commissioners, including Richard Toole, himself and several others. They were making a public disclosure about the fact that their names were on that suit but noted that the State Ethics Commission said that it did not feel that any of them were in any conflict.

**John Best** was said that he was also named in this prior lawsuit and read the following statement. "As an elected member of the MVC, I disclose that my wife, Margaret Curtain, is currently serving as a board member and an officer of Vineyard Conservation Society (VCS). VCS is a non-profit organization involved in land preservation and environmental advocacy, and may testify before the MVC during the CK Associates Public Hearings. Neither my wife nor I have any financial interest in this proposal and I last contributed to VCS in 1998. My conflict has been cleared by the State Ethics Commission."

**Andrew Woodruff** said he had also been named in the lawsuit because his father had worked for VCS, and that he had also been cleared by the State Ethics Commission as not being in conflict.

### **1.1 Applicant's Presentation**

**Brian Lafferty** said the following.

- First, he visited the MVC this afternoon at 3:00 p.m. with respect to its failure to adhere to an order of the Secretary of State to produce public documents, and that the MVC was sued at 3:30 p.m.
- Second, with respect to Richard Toole's disclosure and to set the record straight "he has just lied to everybody in this room. The Ethics Commission has made a determination that Mr. Toole has a financial interest, that Mr. Toole's organization has a financial interest".

**Christina Brown** interrupted and said we don't need the back and forth debate and suggested these issues be discussed later.

**Mr. Lafferty** continued, saying, "Mr. Toole is prohibited from acting. He is being paid by the VCS. VCS has hired an attorney to represent him to fight in an effort to determine that VCS has a financial interest in this project."

**Christina Brown** interrupted and said "Thank you, you have made your point."

**Mr. Lafferty** said he had not, and continued.

- "John Best may not know it but the State Ethics Commission has made a determination that VCS has a financial interest in Down Island Golf and in the property of the Southern Woodlands. Therefore, as a member your immediate family is a member of the Executive Committee by law you are not entitled to sit on this. Mr. Toole may not have told you that the Ethics Commission made this finding, because Mr. Toole's lawyer who represents VCS has tried to have all the records from the court withheld from the public. The records were released a couple of months ago and VCS has a conflict of interest." Pointing his finger at Richard Toole, he said, "You have just lied to these people. You have a conflict of interest. You were told that, and you are in court fighting that"
- "Tristan Israel. We have had numerous discussions with the leadership of the Wampanoag Tribe. Mr. Israel's son is a member of the Wampanoag Tribe. I believe he has a conflict of interest also in this case. He made a disclosure in 1998 at a Wampanoag hearing, that because his son was a member of the tribe, that he had a conflict."

**Christina Brown** said that his objections were noted.

**Deborah Moore** commented that Mr. Lafferty's back was to the audience and asked if they could hear him well.

**Mr. Lafferty** continued, saying that he formally voiced his objection to Linda Sibley sitting on this. He sent the Commission's Executive Director a video last night.

**Christina Brown** said that this is not the forum for this discussion. This is a Public Hearing on your application on the Southern Woodlands.

**Mr. Lafferty** said that these issues are specific circumstances that deal directly with the application. **Christina Brown** said that she would not debate.

**Mr. Lafferty** responded, "nor will I. The last one. Mr. Athearn, although I do not have a confirmation, so I am not making an accusation, I am merely stating what I have been told, that you have done some amount of work for the owners of Vineyard Acres II. I am not making a judgment, or accusation. I don't know whether it entails a conflict."

**Christina Brown** said, "You have made your point".

**Brian Lafferty** then asked, "Does anyone on the board want to clear their conflicts and leave?"

**Tristan Israel** said that had a son who is a member of the Wampanoag Tribe, and that he had not considered or even thought about that being a conflict of interest, which is why he never brought it up. He said, "since you mentioned it, my son is a member of the tribe and I do not have a problem sitting on this. To answer you, I am sorry that I did not bring it up because I did not realize it was pertinent."

**Jane A. Greene** disclosed for the record that she worked for the Wampanoag Tribe Housing Authority.

**Christina Brown** asked Mr. Lafferty if he would like to begin his presentation of his application.

**Mr. Lafferty** said that there was a disagreement about the Commission's role in the 40B process. He said that he watched the Commission's counsel, Eric Wodlinger, tell the press that

the Dennis Case – that was recently decided in favor of the Comprehensive Permit Law over the regional authority – had no bearing on the Commission. He watched Attorney Rappaport stand up in a forum and announce to everybody in Oak Bluffs that the Dennis Case does not bear on his case with respect to whether the Commission has jurisdiction over 40B. What he did not know until three weeks ago was that, out of \$172,000 in legal fees the Commission spent last year, some \$10,000 of that was used to file an amicus brief in support of the Kings Highway Regional District. “So apparently, what attorneys Wodlinger and Rappaport told the public is not true. The Commission obviously feels the Dennis Decision does have some bearing, otherwise why would they spend \$10,000 to fight it, and lose I might add.”

**Brian Lafferty** presented his application:

- This project is different than the original project, it has 320 units instead of the previous 366, since 14 condo units were replaced with 14 single-family homes, each with 3 bedrooms. The project entails 277 acres of which 60 acres is open space.
- There are approximately 5 miles of road.
- The total impervious area is about 24.5.
- There is a total of 1,096 bedrooms.
- The entire project was designed to meet the standards of the DEP regulations for a nitrogen sensitive area. In this instance, less than 25% of the site is considered in the zone of contribution, but the project was designed to meet requirements for Zone 2. All the single-family homes have individual septic systems.
- The 80 studio rental units, located in the far easterly part of the site, are handled by one large septic system, which falls under the 10,000 gallons per day requirement for a sewage discharge permit under Title 5.
- Of the total number of units in the project, 25% of the units are affordable to people earning at or below an 80% of the median.
- One other change in the previously submitted proposal is that none of the ancient ways will have public access. The position of the property owner is that none of these has been open to the public for 75 years. The trails will be used and maintained only by the residents of the development. In some cases the roads will travel on or through what are considered ancient ways.
- Yesterday he received extensive staff notes and is prepared to comment on them.

## **1.2 Staff Reports**

**Jennifer Rand**, DRI Coordinator, commented on her staff report.

- She commented that in the summary she had distributed, a question was just raised in Mr. Lafferty's presentation. The plans say 1040 bedrooms, whereas Mr. Lafferty now says 1096 bedrooms. We should know the answer to that before we go.
- She corrected her notes saying that when discussing the zoning, she had looked in the blue book [the original submission by the Applicant]. An amendment in the yellow book [the revised submission by the Applicant] stated that there could be 89 single-family homes as a possible alternative. They did not suggest that 68 single-family homes was the maximum under existing zoning. It would appear that somewhere between 80 and 90 houses would be permissible under current zoning.
- In terms of night lighting, there are no plans. There is no landscaping plan submitted. The developer said they would landscape the studio units and individual homeowners would do their own landscaping. Consequently, we don't have any idea whether the plantings would be native or non-native, low or high. “I simply do not have a plan.”

- Regarding the habitat, an avian impact assessment completed in May 2001 which was an amendment to a study done in the fall of 1999. So the avian assessment looked at the entire 273-acre parcel and at that time the habitat analysis was done based on what a golf course would do for the site. The analysis was not redone for what a suburban development would do to the site. I think an assumption could be made that a suburban development would probably cause an increase in suburban birds and a decrease in interior species. But to what effect it is hard to know.
- In terms of moths, the applicant completed a survey of state listed endangered moths done on approximately 200 acres of the site in 1999. In that study the author stated, "Because completion of this project will entail unavoidable loss of habitat for listed Lepidopteran species, accounting for this loss will be necessary. Because the pitch pine dominant upland forest has the highest value for rare Lepidoptera at this site and includes a scrub oak component, this is the habitat for which mitigation efforts should be concentrated."
- She commented that it was worthy noting that the western edge of the property was designated as open space, and there wasn't a large area of pitch pine on the western edge, so that by default because of archeological significance of the western edge there will be some pitch pine left, but by no means the whole piece. And at that time during the Lepidoptera study the mitigation proposed by the applicant was going to be one-for-one replication of pitch pine and scrub oak habitat that was going to be lost. At this time there is no mitigation proposed.
- In terms of consistency with Regional Island Plan, there are a number of sections of the Policy Plan that perhaps the Applicant's proposal would not be consistent with. A list of these sections, she commented, was included in her report.

**Brian Lafferty** commented that the change for the original Oak Bluffs plans also eliminated one of the buildings of the Studio Rental Units (SRUs). There had been six buildings. The total number of bedrooms was, in fact, 1040.

**Jo-Ann Taylor**, Coastal Planner; District of Critical Planning Concern (DCPC) explained that DCPC regulations, under Chapter 831, are reviewed differently from other municipal regulations. Some regulations include specific numeric standards, but numeric standards are often not appropriate for protection of some of the special resources in need of protection. If numeric standards are not appropriate, site plan review is chosen as the best protection. She noted that the subject property includes within its boundaries four such special districts; some regulated with specific numeric standards and some regulated with site plan review.

- Island Roads District. The Island Roads District regulations require that "any additional vehicular access to the public road must be at least 1,000 feet, measured on the same side of the road, from any other vehicular access...". According to the plans, an additional vehicular access to Barnes Road is proposed to be located approximately 325 feet from the existing access. The proposal does not meet the standard.
- Lagoon Pond District. The Board of Health regulations for the District limit new construction to one bedroom per 15,000 square feet of total lot area. The proposed lots' size is approximately 34,000 square feet in area. Within the Lagoon Pond District, 10-12 lots are proposed for 4-bedroom single-family residences (10 lots entirely and 2 lots partially). Also within the District, Studio Rental Units 1-4 are proposed to include 16 units each. The proposal does not meet the standard.
- Coastal District. Although a wedge of the property is located within the Coastal District, no regulated uses are proposed.

- Southern Woodlands District. The specific numeric standards were not seen to be adequate to protect the resources, but allowed the site plan review to be used on the project, which allows more flexibility. The site plan review has a number of standards and criteria to be used. Site Plan Review Regulations, as found in sections 8-13, are specific to the review of stormwater management, etc.:
  - The regulations require conformance with Section 44 of the O.B. Subdivision Rules and Regulations, which includes the requirement that, to the maximum extent feasible, stormwater should be recharged rather than pumped to a surface water body such as the Lagoon. The project proposes the use of water quality swales and, if necessary, leaching structures. No details of the stormwater management system have been provided.
  - Section 9 for archeological sites the standard again requires that “to the maximum extent feasible, land uses or developments shall avoid causing any adverse effect on areas determined to be sites of archeological significance....” Without a numeric standard, the Planning Board would determine whether or not the standard “to the maximum extent feasible” has been met.
  - Section 10 includes specific standards regarding the preservation of Special Ways. She noted that regulations 10c and e included specific standards that must be met, in order to satisfy the Planning Board that the Special Ways are protected. See staff notes for trails and special ways for discussion of proposed impacts.
  - Section 11 concerns Site Plan Review Regulations for preservation of woodland and habitat. The Planning Board would determine whether or not the standard “to the maximum extent feasible” is met. No details have been provided by the applicant.
  - Section 12a pertains to the Site Plan Review Regulations for landscape and topography. It states that existing natural vegetation shall be retained within 100’ of Barnes and County Roads, and within 50 feet of all other boundaries. The proposal states “Woodland will...surround the perimeter of the site...” A note appears on a plan, referencing “25’ buffer – typical” around the property. No details have been provided. This section includes specific numeric standards that must be met in order for the Planning Board to determine that the natural vegetation in these buffer areas is protected.
  - Section 12b also states that no structure may be located within 150’ of Barnes and County Roads, and within 100 feet of all other boundaries of the District. Although, no structures are proposed within 150’ of Barnes Road, several lots in the northern part of the subdivision are situated such that structures could be built within 100 feet of that boundary. The proposal meets the standard regarding Barnes and County Roads, but may not meet the 100’ standard with respect to the northern boundary of the District, as to the maximum extent possible, structures shall not be built on ridges or hilltops. The plans, as presented, do not provide enough information to allow for an assessment of this, and it would be up to the Planning Board to determine whether or not the standard to the maximum extent feasible is met.
  - Section 13 concerning regulations for nitrogen management will be discussed by the Water Resource Planner.

**Bill Veno**, Senior Planner, discussed trails and access.

- He stated that there were five different “special ways” identified on this property, which were protected with a 50’ buffer on both sides of the ways. Alterations to the alignment and to the buffering of the ways can be made through a special permit process outlined in the town’s DCPC regulations. The proposal retains the general connections that these trails created, but realigns many trail segments and makes no mention of buffer areas along

them. The plan shows roughly 55% of the existing routes of the five special ways remain in their current locations. However, almost 60% of these areas are within the right-of-way of the proposal's new roadways, crossing the special ways 11 times. Between 25 to 42 driveways would also cross the special ways. He provided a table identifying the impacts for each special way.

- Regardless of the access issues, the special ways designation does not assert or establish public rights to use the ways, but instead recognize the value of the ways as historical remnants of the Island's character and culture and as valuable recreational and transportation resources to the local and island-wide communities.
- The applicant's plan shows six open space parcels, four of which are used for stormwater drainage infiltration. The applicant computes these parcels, and the proposal's 25-foot perimeter buffer (10% of the open space), to total nearly 70 acres, or about 24% of the total acreage. The bulk of this space is at the western end of the property along Barnes Road where two vehicular entrances to the property are proposed. The rest of the property is not broken up with any open space. The applicant has offered no information on whether, or how, the vegetation on these open space lands will be protected.

**Christine Flynn**, Affordable Housing and Economic Development Planner, discussed affordable housing and fiscal impact.

- The applicant proposes to develop 320 units of housing.
- The amount of affordable housing for low and moderate income housing will be 25% of the total number of units, proportional for each type of housing, i.e., 60 single-family units and 20 studio rental units; however, the application is unclear.
- In addition to the 20 studio rentals, the applicant has proposed to designate 25% of the studio units for seasonal workers.
- A mixed-income housing development is proposed but there is no documentation to demonstrate that it will be mixed beyond the affordable component. The applicant states that there will be 1,040 bedrooms for the entire project. This averages out to be four bedrooms for each of the single-family homes including the affordable homes.
- In terms of phase development, the applicant has acknowledged that zoning exemptions for the project from the town will be needed. The proposal's Phasing Schedule only accounts for 165 market rate single-family housing units and 75 total affordable units. Five affordable single-family housing units and 15 market rate single family-housing units are not accounted for.
- Concerning the fiscal impact assessment, in 2001 a report was done, by Mullins Associates Incorporated, for a 366-unit housing development and a golf course development. The projected revenue was \$2,177,404 and would cost the town \$3,910,979 which amounts to a net annual fiscal negative impact of \$1,733,575. During the golf course proceedings, staff had questioned some of the assumptions of the report; however, at the Land Use Planning Committee Meeting of August 4, 2003, the applicant was asked to submit additional information regarding these figures but the applicant chose to stick with these figures.

**Bill Wilcox**, Water Resources Planner, summarized his staff report on groundwater and wastewater.

- The site is situated in a unique location that sits atop the groundwater divide that separates the groundwater flowing to the Lagoon, Fresh Pond and Sengekontacket, as well as northerly to Oak Bluffs Harbor, Farm Pond, Crystal Lake and Brush Pond. It is a complex situation and difficult to say which water goes into which pond.

- In a previous review, we basically split the property in half and it was assumed that half of the property was over groundwater that would go to Lagoon Pond and half to Sengekontacket Pond. Both of these ponds are tidal ponds, and all tidal ponds are limited by nitrogen. Increased nitrogen is acceptable to a point, but if too much, it can create dissolved oxygen problems.
- We have seen problems with survival of juvenile shellfish at the Shellfish Hatchery and in the pond with low levels of dissolved oxygen probably resulting from nitrogen loading in the southern end of Lagoon Pond this summer. The Lagoon Pond has other symptoms that could result from nitrogen loading including decreases in eelgrass beds. Sengekontacket Pond also has demonstrated some problems that may be attributed to nitrogen loading. The eelgrass beds disappeared in the late 1990s.
- The groundwater on site contributes to the Farm Neck Well, whose Zone of Contribution extends into the property. We did not receive an overlay of the subdivision plan that shows the boundaries of the zone of contribution (ZOC), but I have estimated that it is 100 acres of the site.
- In terms of drinking water, from the number of bedrooms proposed, he estimates that the property will require in excess of 100,000 gallons per day of drinking water. He has been in touch with the Water District, and they believe they have an adequate supply and infrastructure to meet this demand. But the short-term jump in water demand will necessitate the Town to begin to look for another water supply source sooner perhaps than they might have.
- In terms of runoff, the applicant has indicated that they will meet the DEP Stormwater Management Policy, which means that they will recharge runoff on the site. However, It is unclear exactly how the runoff from the roads is going to be handled. In one section they indicate that it would be primarily with the grass swales along the sides of the roads. However, the drainage plan shows a collection system running into the open space areas. The soil can certainly handle the infiltration of the water runoff. However, if runoff is discharge into sand beds, rather than into grass swales, there will be an additional nitrogen loading to the groundwater.
- Most of the drainage on the property is internal. The runoff flows to depressions within the property and infiltrates. However on the side of the property that is towards Lagoon Pond, there is a slope down to Barnes Road and down to the wetlands associated with the Upper Lagoon Pond. We did not receive an erosion and sedimentation control plan for the construction process to review.
- Clearing and Grubbing: It is unclear as to how many acres would be cleared on the site. The Commission has been told 100 acres but has also heard 70% of the site, which would be 191 acres. Clearing and grubbing of vegetation has been shown to cause a one-time release of nitrogen from the soil.
- The proposed wastewater disposal will be by Title 5 systems with no denitrification. There is no nitrogen offset proposed.
- The applicant also indicated that they would seek no variances, waivers or relief from the State Environmental Code, basically Title 5.
- In terms of nitrogen limitations within the ZOC of Farm Neck Well, Title 5 limits the wastewater flow to one bedroom per 10,000 sq. ft. of lot area. There are a number of lots that range in size 20,000 to 35,000 sq. ft. However, we have been told that there will be an average of four bedrooms per dwelling. I am sure that that means there are larger lots with a few more bedrooms or lots outside of the ZOC that will have more bedrooms. This issue needs to be clarified.



- I estimate that there are 90 proposed resident sites within the Farm Neck ZOC and only open space within the Lagoon Well ZOC.
- The site is within the Southern Woodlands DCPC where there are regulations, which state “No land use shall result in cumulative nitrogen concentration of 3 mg/l or more in groundwater”. The DCPC language requires that the DEP Nitrogen Loading Computer Model be used to calculate that concentration. He ran that through, estimating 190 units in the Lagoon watershed, which resulted in a nitrogen concentration of 7 parts per million, and that is assuming four bedrooms per dwelling. If an average of three bedrooms per dwelling is used, the nitrogen concentration would be approximately 5.8 mg/l. This concentration does not include nitrogen loading from lawns. On the Sengekontacket Pond watershed sides there are 130 residences on 136 acres, with similar results. The proposal clearly does not meet the DCPC requirement for a cumulative nitrogen concentration below 3 mg/l.
- He tested with the MV Commission model for nitrogen loading for the Lagoon watershed, which assumes that 54% of the units are seasonal non-affordable units based on population, with a result of approximately 2.5 to 3.0 mg/l. These results include residences with 2,500 sq. ft. of lawn fertilized twice a year. However, there is no landscaping plan, therefore the exact acreage of lawn area is unknown.
- The total nitrogen load to the Lagoon Pond is estimated at 800 kilograms per year, which averages out to 5.8 kgs per acre. The recommended guidance for nitrogen loading to the Lagoon is 4.4 kgs for the highest water quality and 13.3 for good water quality. Currently, it is estimated that the Lagoon is at a loading rate of 4.4 kgs per acre and is showing symptoms of excess productivity.
- Lastly, he mentioned an item in a letter from Horsley and Witten, consultants, to the effect that the subject property would be considered a facility under Title 5, and therefore would be required to get a groundwater discharge permit. I confirmed this comment with the DEP Southeast, and believe that as long as it is a subdivision and they are not constructing the sewage system, the individual buyers of lots in the proposed subdivision could apply for their own permits for septic systems. He did not believe that the proposal would be treated as a facility if this approach would be taken.

**Mark London**, Executive Director, summarized a report on the *Traffic Impact and Access Study* prepared by David Wessling, MVC Regional and Transportation Planner, in his absence. David analyzed the traffic study submitted by MS Transportation Systems, which analyzed the potential impact of the project and suggested various mitigation measures. He had several concerns with respect to the methodology, called into question some of the report’s conclusions about the potential impact, and therefore, how effective mitigation measures would be.

- With respect to trip generation, the consultant used a trip generation rate that resulted in a total of 2,664 trips per day. However, the trip generation rates used in other similar projects based on on-Island observations, is 13 daily trips per household per day, which is more than the consultant had used. This resulted in a total of 3,550 daily trips, which is about 1/3 higher than stated by the consultant.
- In terms of trip distribution, the consultant said based it on population data, home-to-work commute data, and traffic flow patterns within the study area. Those first two factors measured year-round population and off-peak season trips to work. However, peak summer travel, which is, of course, of greater concern, is heavily influenced by non-work trips, such as recreation, shopping and leisure trips. The traffic flow patterns would therefore be different. The consultant said that he had split the traffic coming out of the project with about half and half going north and half going south. David Wessling has a computer

Travel Demand Model of the entire island and plugged in the trip generation data. The model generated a trip distribution pattern that was different from the consultant's pattern. Basically it resulted in a greater number of trips coming out of the project site going south, rather than north.

- In summary, MS Transportation System had estimated that 48% of the 2,664 trips, or a total of 1,279 trips per day would go through the "Blinker" intersection. However, using the 33% greater number of generated trips (based on actual observation of Island trip generation) and based on the trip distribution from the Travel Demand Model, shows that the number of trips that would head south is closer to 75% of 3550 trips or 2663 trips. This is more than double the number of trips estimated by the consultant that would go through the "Blinker" intersection, which, as we know, is one of the most dangerous intersections on the Island.
- The second part of this traffic study pertains to the potential impact on the Blinker intersection. He noted that the same firm, MS Transportation Systems, had done a study of the intersection and used different figures than those that he used in this report. David Wessling had difficulty understanding how those calculations were done and reconciling these two sets of figures. His preliminary analysis would indicate that there were reasons to be concerned about the impact. He hoped to enter into dialog with the consultant to clarify these issues.
- **Robert Schwartz** asked whether the roundabout would mitigate the impact of the traffic at the "Blinker." **Mark London** answered that in the report the consultant suggests that there would be no problem with the roundabout. In David's traffic analysis, he suggested that even with a roundabout there could be a reason for concern. He said that calculating the level of services (LOS) for the roundabout is done differently than at an intersection, and so the consultant used the methodology of the calculating the ratio of flow to capacity, to try to give an indication of the level of service. David gave some examples of other equations of the level of service being equated to this ratio, and indicated that he was concerned that when the ratio of volume to capacity exceeds .89 or .99, or even goes over 1.00 which it does with some of the movements with the "Blinker," he was concerned that this could result in an LOS, could be equivalent to "E" or "F". However, there was not enough material to pronounce definitively on this. David Wessling would have liked to have interaction with the consultant to clarify the question.

*Christina Brown declared a recess to the meeting at 7:44 p.m. and resumed the meeting at 7:55 pm.*

### 1.3 Testimony from Town Officials

**Richard Combra**, Chairman of the Oak Bluffs Board of Selectmen stated that at their Tuesday, August 12, 2003 meeting, after discussion, the Board of Selectmen voted unanimously in opposition to the CK Associates application for many reasons.

- The \$1.8 million annual tax burden could not be sustained by the Town of Oak Bluffs, without seriously taxing the many town services, including school, water and plowing services.
- The application is incomplete. There are many areas of the application where staff requested information and it has not been provided to them. The Board of Selectmen requests that the Commission reject this application.
- The Board of Selectmen does not take lightly the need for affordable housing but the overall impact of this proposal is unacceptable.

**Roger Wey**, Oak Bluffs Selectman and County Commissioner made the following comments.

- There are good and bad projects. The Town supports the good ones that help the Town create affordable housing so that young and old people in the Town that need it can continue to live here.
- However, this project in the Southern Woodlands has 320 housing units. The Town doesn't have the infrastructure to support a project that big. That is why it would damage the Town. It will overflow our schools, create major traffic and parking problems, over-extend our public safety resources, destroy the Lagoon Pond, further damage Sengekontacket and deplete our water supply.
- The developer has said it will cost the Town more than \$1.8 million per year over the revenue it will get from it.
- As to the ancient ways, the developer states that there will never be a public access on these ways for people to walk on. The Commission has denied three other DRIs in the Southern Woodlands. As a Selectman and a resident of Oak Bluffs, he asked the Commission to deny this one. The Southern Woodlands would be better left natural.

**Mr. Lafferty** said, "That's a bunch of baloney. Cut the damn check so I will leave it as open space. How come you keep talking about that?" **Christina Brown** interjected, saying that this is not an occasion for debate. The Commission wants to hear information.

**Timothy Dobel** is member of the Oak Bluffs School Committee, Chairman of the All-Island School Committee, and member of the Oak Bluffs Economic Development Committee.

- Oak Bluffs built a new school about seven years ago, which is now full. The school population for the last few years was 420 to 450 children. The school was built for 450.
- This development would have a staggering impact upon our school and the Town's financial ability to properly educate their children. The school population has fluctuated between 400-450 the last few years.
- He thought the \$1.8 million impact was low for the negative impact on the Town, and thought that there would be over a \$1 million of impact just on school financing. The definitive figures were difficult to come by since it was hard to know how many children would be involved.
- As member of the Affordable Housing Committee, he is concerned about need to accommodate affordable housing for our teachers, and felt that affordable housing needs to be done proportionally and spread over island, not all in one spot.
- He concluded, "I hope the Commission using its extraordinary powers accorded by the State will reject this DRI because of the profound negative impact it would have to Oak Bluffs. It would be wounding for our Town."

**Chief Alley**, Fire Chief of Oak Bluffs, said that the project would greatly affect the tax infrastructure of Oak Bluffs, and that the Town would need a manned satellite fire station with an EMS squad, which the Town would not be able to afford now or in the near future. He strongly opposes the project.

#### 1.4 Public Testimony in Favor of the Project

There was none.

#### 1.5 Public Testimony Opposed to the Project

**Brendan O'Neil**, Executive Director of the Vineyard Conservation Society (VCS), stated that he had testified in the past. The VCS was a watchdog of land use issues. That advocacy role was something that VCS had done for 38 years. The VCS submitted a brief that he summarized as follows.

- The application failed to present information on nitrogen loading to the Lagoon Pond, which was currently at or near the limit of nitrogen-carrying capacity. Recently there have been accounts of shellfish-die-offs, suggesting that that particular part of the system was under stress. Additional pollution from wastewater and runoff would make the situation worse.
- To offer a sense of the scale of the wastewater flow coming from the proposed system, the design flow from the development is about one-third the total design flow for the town's new wastewater treatment facility serving all the downtown and surrounding neighborhoods. The application made it difficult to decipher wastewater flows from the 80 studio rental units, as to whether they were one-bedroom or family units, or a combination. The comprehensive permit application stated that they would be affordable for a family; that's a discrepancy, it is not clear. 40B developments are not exempt from health regulations, and the septic plan proposed impacts the Zone II drinking water protection area of the Farm Neck well. The application plan failed to cite that. The septic plan cannot be permitted under state Title V regulations, as presented. The development qualifies as a "common facility" requiring centrally treated wastewater.
- The plan proposed 25 acres of impervious surfaces including buildings, parking and roads. The application failed to present information on the impacts of heavy metals, oils and nutrients on Zone II drinking water recharge, grading, parking lot runoff management, drainage calculations and watershed delineations.
- The entirety of the site is designated "Priority Habitats of Rare Species" by the state. The application failed to present information on mitigating taking of listed species on the site and to provide habitat assessment on the most recently acquired acreage. There was no revised MEPA filing.
- Ancient trails providing cross-Island linkages would be lost. The Commission policy urges new vehicular access in special ways areas to be planned on new rights-of-way in order to preserve the old roads for alternative forms of transportation.

In conclusion, the VCS believes that the DRI fails to meet the requirements of the Martha's Vineyard Commission enabling Act, and entails greater adverse environmental impacts than prior plans filed by the applicant for the same site, previously disapproved by the Commission. The development would generate more pollution and provide fewer options for preservation of contiguous woodland areas than earlier plans. The plan created more impervious surfaces and eliminated more interior woodlands, which are state-designated as priority "Core Habitat," as well as proposing the elimination of special ways. VCS believes this development is not an appropriate one for this site. The Vineyard Conservation Society urged the Martha's Vineyard Commission to disapprove the DRI application.

**Brian McGroarty** of Oak Bluffs said that a lot of money and staff time had been wasted on an application that is obviously woefully inadequate by the standards of Chapter 831. The applicant submitted his application as a 40B project, and that conflict needs to be settled by the Supreme Judicial Court of Massachusetts. He requested that the Commission vote to deny this project. He said that everyone is waiting for the land to be devalued so the Land Bank and conservation partnerships could come in and purchase the property from the owner. However, a decision from the Supreme Judicial Court to find out if the Commission has final jurisdiction

over 40B projects is needed. "Please stop wasting our time and vote this application down tonight."

**Renee Balter** commented that in reviewing the project, she thought it important to understand the concerns that had been expressed by the residents of Oak Bluffs on the future of the Southern Woodlands. In 1996, the Open Space Survey showed significant support for preserving open space in the Southern Woodlands and to foster a plan for public access and passive recreation for this area. In 1998 the Town petitioned the MVC to make the Southern Woodlands site a District of Critical Planning Concern (DCPC). As a member of the committee that drafted the DCPC regulations, these were designed to protect the public water supply, old trails and ancient ways, to save our two major saltwater ponds and to preserve open space. The Town voted overwhelmingly to accept these regulations, making them part of the Oak Bluffs by-laws at the Annual Town Meeting in April 1999. She hoped that the Commission would give careful consideration to these regulations as it reviewed the project. She asked whether there was access to the Town-owned land in the center of the project (approximately 25 acres), which she believed was designated as resident home site land, so that the town would be able to develop it and add more houses.

**Elizabeth Campbell**, resident of Edgartown, was against the project. She stated that she could not think of anything worse for Oak Bluffs than to have such a concentrated development. She commented that much of the open space on the map was labeled SRV and asked what that meant. She asked who would monitor erosion, the adding of more impervious surfaces, the use of fertilizer, and keeping the existing vegetation.

**Mimi Davison** of Barnes Road, Oak Bluffs, asked whether Mr. Kupersmith owned all of the proposed 60 acres of open space, or did it include Town-owned land. She also wanted to know if the land to be developed would it be clear-cut, or would the applicant selectively prune the site to maintain a wooded habitat. She urged the Commission to oppose this application. She commented that affordable housing was an important issue for the Island, and that the Island had half of its housing stock sitting vacant for half of the year. She felt many ways could be found to utilize the existing housing stock for affordable housing before doing the proposed project. She stated it would conserve resources and help to preserve the character of the Island, which allows people of various economic levels to live together.

**Manuel deBettencourt** of Oak Bluffs urged the Commission to deny the application. He commented that he was astounded by the traffic report, which was higher than he expected. Adding 3,000 vehicles per day to the traffic flow with current traffic issues would be chaotic. He stated that the chlorinated water from the faucet tasted badly this past week, and he would not want to have to drink chlorinated water on a continuous basis.

**Carl Sager**, a summer resident of Oak Bluffs, stated he was concerned about the health of Lagoon Pond. He said there was every indication that Lagoon Pond was nearing its limit on nitrogen and that he was concerned because the project did not address this issue. The problem was not only an aesthetic issue, but also an economic one as well, as the economy depends on tourism, and to some extent on shell fishing.

**Ann Margetson** of Oak Bluffs urged the Commission to deny the proposal. She stated that the project was more for the benefit of the developer than for achieving affordable housing. The health of the pond was an economic issue, and always had been related to any development of that area, which are somewhat major economic resources on every level.

**David Cargill** of Oak Bluffs was born on the Island. He commented that he had dreamed of the Southern Woodlands having 30 to 40 nice homes, a swimming pool, a campground, walking

areas with many trees, maybe a mini-mall within the project so people wouldn't have to drive in and out of the area. But in the real world, he didn't understand how a developer and his assistant could present an application of this magnitude. The application is beyond any practicality of being accepted.

**Duncan Pickett**, resident of Oak Bluffs and student at the high school, said if the Commissioners recalled the budget crisis that the towns went through and the funding for the high school, they would remember the overwhelming support that towns gave to the high school, and to the philosophy of the high school. Flooding the school with the amount of students that this proposal represented would totally counteract the work in support of the school, and would destroy the many special items that made the school great.

**Tom Walsh**, a real estate developer for 35 years, stated that in his experience basically there were two kinds of developers; one that respected the land, the other that disrespected the land. He stated to Mr. Lafferty, that he fell in the category of disrespecting the land. To be a successful real estate developer, you have to respect the land and therefore would eventually get what you wanted. This is not being done with this proposal. He asked the Commission to deny this proposal on the aforementioned detriments. "It is an environmental, cultural, traffic and fiscal nightmare to the Town of Oak Bluffs."

#### 1.6 Members of the Commission

**Mark London, Executive Director**, commented that as the meeting had to end in a half an hour due to the room availability, it would be useful for the Commissioners to focus their questions on missing pieces of information within the project presentation. This would give the applicant an opportunity to provide information between now, and the continuation of the Public Hearing.

**Douglas Sederholm** asked whether there were any members of the public present who wanted to speak in favor of the project. He said that the Commission had heard unanimous opposition cited to the project, and ask any public member to speak out or to raise their hand if they were in favor of the project. He noted no response from the members of the public.

**Katherine Newman** asked Mr. Lafferty if he had any remedy for the concerns of Oak Bluffs residents' on the issue of the fiscal impact of the \$1.8 million deficit on the town. **Mr. Lafferty** said no. **Christina Brown** asked whether he wanted to give more information later. **Mr. Lafferty** said no.

**John Best** stated that the applicant planned on building at least 80 units of rental housing, and asked if they had made any plans to incorporate energy efficiency savings above and beyond the Massachusetts building code. He also asked what accommodations had been made for public transportation accessibility. He stated, that past applications had concessions made for public transportation and things of that nature. **Mr. Lafferty**, referring to his accusations made at the opening of the hearing, said that he would not have any discussion with anyone on the Commission who had a conflict of interest.

**Christina Brown** asked for more information about the energy efficiency savings. **Mr. Lafferty** stated that the project would meet the Massachusetts building code.

**Christina Brown** asked what measures were proposed to mitigate negative transportation impacts. **Mr. Lafferty** replied that their firm's consultant suggested, in a broad sense, the developer and the town would work together to look at ways to address traffic issues concerning the project. He said, as Mr. London mentioned, the same traffic consultant who works for the

Applicant also worked with the Town on the roundabout. The consultant's suggestion with respect to traffic was that it clearly generated a significant amount of traffic and is an issue that normally would be discussed with the Oak Bluffs Zoning Board of Appeals (ZBA). In this situation, because the ZBA failed to act, that will not occur. Nothing specific had been proposed. He said that unless something is arrived at as a result of settlement discussions over litigation, there would be no specific proposal.

**Christina Brown** asked what additional traffic information would the Applicant and his traffic consultant give the Commissioners and staff. **Mr. Lafferty** said "none."

**Jane A. Greene** said that she thought Mr. Best's question was addressing the issue of public transportation, for example, whether or not the applicant would accommodate buses at the site. **Mr. Lafferty** said that the developer would be more than happy to put a bus stop at the site, that it would serve their purposes, as well as the community's purposes.

**Jane A. Greene** asked to have development procedures clarified. She said that Mr. Lafferty had spoken about the 80 units of rental housing. And then she heard that the applicant is planning to sell lots, which would require a permit from the DEP for septic. She asked if he was planning to develop the rental units himself or sell off lots for development: how did he plan on doing this? **Mr. Lafferty** commented that he thought there was a misunderstanding because, as usual, VCS was unable to tell the truth. The issue of selling the lots was irrelevant with respect to the [DEP] Title 5 [septic regulations]. If the lots were subdivided, they did not fall under the discharge permit requirements. He said that they were not going to sell off lots to avoid discharge requirements, but the individual lots with homes on them would be sold to individual owners.

**Jane A. Greene** asked whether there would be a homeowner's association. **Mr. Lafferty** said this was not addressed yet, but would be in the interest of the developer.

**Jane A. Greene** said the Commission would want homeowner's association information in order to address issues such as lawn fertilizers on the site, runoff issues, that plantings would be native and not imported, and to evaluate the impact on the Lagoon and Sengekontacket Ponds. **Mr. Lafferty** said that his goal was to allow people the freedom to own the land and house, and do what they wanted with their property within certain limits. It would be contrary to his core beliefs to put extensive restrictions on how people use their property.

**Jane A. Greene** asked whether he would limit heavy metal fertilizers. **Mr. Lafferty** said he was not an expert on heavy metal fertilizers. **Jane A. Greene** explained that if those fertilizers got into the ponds, that would be the end of them. **Mr. Lafferty** said if someone could show scientific evidence of heavy metal fertilizer, or something specific that the developer could control and create, the developer would gladly do something to improve the environment.

**Jane A. Greene** asked about lot sizes. **Mr. Lafferty** said all houses are four-bedroom lots 18,000 to 40,000 sq. ft., averaging about 28,000 sq. ft.

**Jane A. Greene** asked whether the affordable houses were going to be on 40,000 sq. ft. lots. **Mr. Lafferty** answered that specific affordable housing lots had not been chosen, and that was subject to whatever sort of discussion the Zoning Board of Appeals would look at under normal circumstances, but they would not pick out all the small lots and say they were affordable. He suggested that one solution that might be interesting would be to make the affordable homes duplexes, on the largest lots of the site. A duplex would look like a single-family house but would blend two units together, and would be less identifiable as affordable housing. A zero lot line would go through the middle of the duplex building, making two homes.

**Jane A. Greene** commented that the submitted CK Associates information sheet indicated the cost of houses, so that she assumed the developer would be building affordable homes. **Mr. Lafferty** replied, "That's our intent at this point." He also said the proposal was for the developer to own the studio units.

**Jane A. Greene** asked about the project's landscape plan around the entranceways to the site. **Mr. Lafferty** said that the developer had not had a landscape architect do a specific landscape design for the entranceway or for the 80 units. He explained that the comprehensive permit process is normally a process that goes through a lot of give and take between the ZBA and the developer, and most often a project changes and is molded and twisted around. So normally, a design is not put in stone. In this case there was no specific design plans.

**Jane A. Greene** said that there should be a lighting plan, for safety reasons and suggested solar lighting. **Mr. Lafferty** said that the rules and regulations for subdivisions of land in Oak Bluffs required lighting and suggested that a plan could be found in the application; that the project had met all the rules and regulations required for subdivisions of land in Oak Bluffs. **Jane A. Greene** said that she had the yellow book, which did not address that and would like to see the lighting plan.

**Linda Sibley** commented that the Commission always required homeowners' association covenants, a landscaping plan and lighting plan. She asked whether there was design attention to the possibility of clustering this development so there would be significant open space remaining. **Mr. Lafferty** said it has been clustered; there were 59 acres of open space.

**Christina Brown** asked what alternatives were looked at to keep larger pieces of contiguous open space. **Mr. Lafferty** said that many people did not want to live on 10,000 sq. ft. lots. In this specific proposal the aim was to let people buy a reasonable piece of land. Most lots were three-quarters of an acre, larger than most lots in Oak Bluffs.

**Megan Ottens-Sargent** asked him to clarify what areas were open spaces. **Mr. Lafferty** pointed out the areas on the map and said area "F" on the far east side, area "C" on the northeasterly side and areas "B" and "A" on the westerly side. There were three identified areas of open space, "A," "C" and "F" on the site plan that were mentioned as drainage areas. He indicated that the project would meet the DEP Stormwater Management Policy. Some of the storm water may be polished before infiltration.

**Megan Ottens-Sargent** asked if there would be alterations to the open space lands. **Mr. Lafferty** said there would be alterations but no development.

**Megan Ottens-Sargent** asked about road width, as she had noted a 50' width indicated on the site plan. She also wanted to know about sidewalks, the impact on trails and traffic in the site. **Mr. Lafferty** said there were two types of roads proposed in the development. There were 17,129 feet of collector roads, and 8,627 feet of minor roads; a total of 26,000 feet of linear roads all designed to meet Oak Bluffs requirements for subdivisions. He said that the roadway cross sections on the site plan showed areas of pavement 16 to 20 feet, depending on whether the road was a collector or minor road. The plan also showed the 20' road with an area of 6' for a walking or biking trail along all roads.

**Christina Brown** said the Public Hearing would continue to allow staff to prepare a list of clear requests to the applicant for missing information, and to have the applicant speak on those issues.



**Tristan Israel** commented that if, as the Applicant has stated, no more information would be forthcoming, he suggested closing the Public Hearing and leaving the written record open if Mr. Lafferty wanted to submit further information.

**Richard Toole** also suggested closing the Hearing.

**Linda Sibley** urged the hearing to remain open, saying she wanted an opportunity to digest the information and written material presented, and based on that, to ask further questions.

**Christina Brown** said that if the Public Hearing is closed, the Commission couldn't have continuing dialog with applicant. Without deciding on the matter, she invited the Applicant to address questions that had been raised by the audience and any closing remarks.

### 1.7 Applicant's Closing Remarks

**Mr. Lafferty replied to questions that had been raised.**

- That the Southern Woodlands DCPC was irrelevant because the Town of Oak Bluffs did not properly adopt it.
- Concerning the ancient ways, the DCPC was not valid and there was no public access. The developer could do anything he wanted. He reminded the MVC that four months ago, the MVC went to court and tried to have part of CK Associates complaint from the golf course denial dismissed with respect to the ancient ways, and was not successful.
- Concerning nitrogen loading in the zone of contribution of Farm Neck Well, the project does have units located in this area, but the owner can balance the loading over the entire project provided there is some degree of covenant to show that you protect the rest of the units by not having extra bedrooms. Based on the 1,040 bedrooms, 10,400,000 sq. ft. of property would be needed for discharge. The developer owns 12,000,000 sq. ft. of property.
- There is no discharge permit required. That was the reason for redesigning the project, which eliminated the condominium units.
- There is no way of sugar coating the traffic or the financial impact on the town. The developer's analysis showed a negative impact to the town of \$1.8 million. The town went from a net gain of \$540,000 per year [with the last Down Island Golf proposal for the property] to a loss of \$1.8 million.
- His submission to the Oak Bluffs ZBA meets the three statutory requirements for a comprehensive or 40B permit. The developer is classified as a limited corporation, has a site approval letter and site control. The applicant has 30 days to correct any deficiency.
- Concerning public testimony, "The VCS is loose with the truth". The Commission adopted another standard concerning the ponds. As he was a member of the committee that rewrote Title 5 regulations, he noted that the MVC did not have a representative on that committee but Cape Cod did have a representative.
- There is a road, Ross Road, providing access to the center parcel of land owned by the Town of Oak Bluffs. The Town of Oak Bluffs would not be given access for a prison, but would for housing.
- The center parcel is not included in the open space calculation.
- The 30,000 sq. ft. lot size is larger than the average lot size in Oak Bluffs and is larger than some of the ritzier subdivisions, like Meadow View Farms. The project's density is no different than the fancier subdivisions and significantly less than the Town of Oak Bluffs as a whole.

- Concerning nitrogen in Lagoon Pond; some people are living in \$2 million houses and are pumping sewage into a cesspool, and are not willing to pay \$20,000 to upgrade their septic system.
- Everyone has a plan for Corey Kupersmith's property, but it is his property.
- In reference to Doug Sederholm's referendum [asking the audience for a show of hands of people in support of the proposal], it is immaterial how many people in the room are in favor of the project. Every single town Board in Oak Bluffs supported Down-Island Golf.
- There are two outstanding questions from the Commission about lighting and covenants. Neither will be forthcoming since those items are not relevant for a 40B application.
- The MVC has done a miserable job of providing affordable housing on the Island. The Island is like a Disneyland. There are people who work here and don't have a place to live, and the Commission is concerned about a couple of gallons of nitrogen in the Lagoon Pond.
- For a 40B project, there is one standard to be met, which is: Is the project consistent with local needs. There is a prima face case for the developer that it does meet local needs if the town does not have 10% affordable housing, unless there is a safety problem.
- It troubles him when he comes in front of the Commission. Martha's Vineyard is not "uniquer". Everyone thinks his or her town is special or "uniquer". He lives in Concord, which is special, but it is subject to affordable housing. They have to build affordable housing too, just as Martha's Vineyard has to do.
- Roger Wey left saying "The bully is back in town. It's true, the Commission got sued today, and depositions start tomorrow. I don't know who the Commission thinks they are. The Secretary of State ordered the Commission to give us its documents. The Commission is a public agency and the developer will get the documents. There will be no further information forthcoming, written or otherwise. The Hearing should be closed tonight."

**Christina Brown** asked whether he would answer further questions. **Mr. Lafferty** said there would be no further information. **Christina Brown** said that the reason the Commission continues a Public Hearing is to have a chance to digest what they have heard, and to ask further questions based on what they had read. **Mr. Lafferty** said there would be no further information. **Christina Brown** asked Mr. Lafferty if he would feel shortchanged if the Commission closed the hearing tonight.

**Mr. Lafferty** said this was a charade, and knew the Commission would not approve the plan.

There was a discussion about whether the Hearing should be closed or continued. Some Commissioners favored closing the Hearing. Others said that it should be kept open to give Commissioners the opportunity to review their notes, identify discrepancies and have staff look at them, to receive other information from the public and staff, and to make sure that there is a clear record of what information has not been provided by the Applicant, since the Applicant seemed intent on litigation.

*Christina Brown continued the Public Hearing to September 4, 2003 at 7:30 p.m. at the Commission offices.*

*The Meeting adjourned at 9:28 p.m.*

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Chairman

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Date

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Clerk-Treasurer

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Date